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SELECT
COMMITTEE
ON
AUTOMOBILE
INSURANCE



*Second
Interim Report*

DECEMBER, 1961



LEGISLATIVE ASSEMBLY
OF ONTARIO



ONTARIO

LEGISLATIVE ASSEMBLY OF ONTARIO

SECOND INTERIM REPORT OF THE SELECT COMMITTEE

APPOINTED ON APRIL 5th, 1960

TO EXAMINE INTO AND TO REPORT

ON ALL MATTERS RELATING TO PERSONS

WHO SUFFER FINANCIAL LOSS OR

INJURY AS A RESULT OF MOTOR VEHICLE

ACCIDENTS.

DECEMBER, 1961

5-8890

THE SELECT COMMITTEE ON AUTOMOBILE INSURANCE

On April 5, 1960, the following resolution was adopted by the Legislative Assembly:

“That a Select Committee of the House be appointed to examine, investigate, enquire into, study and report on all matters relating to persons who suffer financial loss or injury as a result of motor vehicle accidents and, without restricting the generality of the foregoing, including all matters relating to:

1. Financial responsibility of operators and owners of motor vehicles;
2. The payment of claims inclusive of unsatisfied judgments and others, and also including the operation and coverage of the Unsatisfied Judgment Fund;
3. All aspects of compulsory automobile insurance and other related and relevant plans, including the experience of other jurisdictions;
4. The operation of existing legislation and procedures in Ontario;

And to make such recommendations as are deemed advisable with respect thereto;”

The following were appointed members of the Select Committee:

HON. JAMES N. ALLAN, M.P.P., *Chairman*,

MR. KEITH BROWN, M.P.P.,

MR. A. H. COWLING, M.P.P.,

MR. J. F. EDWARDS, M.P.P.,

MR. GEORGE GOMME, M.P.P.,

MR. JULES MORIN, M.P.P.,

MR. DONALD H. MORROW, M.P.P.,

MR. J. R. SIMONETT, M.P.P.,

MR. VERNON M. SINGER, M.P.P.,

MR. T. D. THOMAS, M.P.P.,

MR. ROSS WHICHER, M.P.P.,

MR. HARRY WORTON, M.P.P.

Subsequently, Mr. T. M. Eberlee was appointed Secretary of the Committee, and Mr. Morris Earl, Registrar of Motor Vehicles, and Mr. R. H. Humphries, Senior Solicitor in the Department of Transport, served as advisers.

The Committee submitted an interim report to the Legislative Assembly on March 21, 1961. This document reviewed in detail the present arrangements in Ontario for the indemnification of victims of motor vehicle accidents, as well as typical examples of alternative plans existing in other jurisdictions in Canada and the United States. The Committee raised a number of questions and expressed the wish that its mandate be renewed so that it might continue its studies along the lines indicated in the report.

Accordingly, the Legislative Assembly reconstituted the Committee with the same terms of reference that had been given to it on April 5, 1960. Because of his appointment to another Select Committee, Mr. T. D. Thomas, M.P.P., withdrew from the Committee and his place was taken by Mr. Norman Davison, M.P.P.

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In April, the Committee commenced a detailed study of the information which had been gathered during the course of the previous year. Further submissions were received from All Canada Insurance Federation, an association of most of the automobile insurance companies licensed to do business in Ontario, and from the Board of Trade of Metropolitan Toronto. The Committee heard a brief prepared by Mr. Elmer Sopha, M.P.P., and studied written representations submitted by other members of the Legislative Assembly and by the general public. Mr. Joseph Linder of New York City, a consulting casualty actuary, was engaged to advise the Committee on technical problems.

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It is specifically understood that certain members of this Committee have signed this Report on the understanding that the recommendations of the majority are a step forward and can be implemented easily by legislation in the current Session. These members want it understood that they believe in the principle of compulsory insurance and expect that this Committee will be re-convened to consider compulsory protection for the people of Ontario.

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After careful consideration of the matters falling within its terms of reference, the Committee has come to certain conclusions and begs to submit the following recommendations to the Legislative Assembly:

- 1. The immediate adoption, on an interim basis at least, of measures designed to increase the number of insured vehicles on the roads of Ontario.**

As the Committee's last report indicated, its members are unanimous in believing that it is desirable for as many motorists as possible to be capable of remedying any damages they may cause through their operation of a motor vehicle. The Committee, however, finds itself unable to come to a conclusive determination on the method which will bring this about to the greatest advantage of the people of Ontario. More time is required before the Committee can render a final judgment as to whether an in-

insurance plan, based on the principle that no person shall operate a motor vehicle unless that vehicle is insured, is more or less advantageous than the general principle of this province's present insurance arrangements.

Pending this decision, the Committee feels that certain steps can and should be taken immediately, within the context of the existing insurance arrangements, to increase the number of insured vehicles on the roads of the province. And the Committee believes that such steps will push the percentage of insured vehicles in Ontario from the present level of 90 or 91 to a figure approaching that which might be obtained through virtually any other method of compelling or inducing financial responsibility, including a safety responsibility law with the impoundment feature.

To accomplish this objective, the Committee recommends:

- (a) that the present fee of \$1.00 payable by every motor vehicle operator or chauffeur when he obtains his driving permit, and which is earmarked for the Unsatisfied Judgment Fund, be retained since it affords, in effect, universal insurance protection against losses arising from accidents involving uninsured, hit-and-run, out-of-province and stolen vehicles;

(Mr. Davison dissents. He does not believe that insured persons should be required to pay the \$1.00 fee.)

- (b) that the fee charged to uninsured owners of motor vehicles and also earmarked for the Unsatisfied Judgment Fund be increased to \$20 from the present \$5 and that this increase be effective January 1, 1962;
- (c) that, in connection with the foregoing fee, the Highway Traffic Act be amended to provide that the owner of a motor vehicle must at any time during the license year be able to show proof either that the vehicle is insured or, if there is no insurance in effect on the vehicle, that the \$20 fee has been paid. It should, of course, be impossible for an owner to register his motor vehicle and obtain his license plates without either showing proof of insurance on the vehicle or paying the \$20 fee. In addition, the Committee's recommendation contemplates that an owner who, for example, had proof of insurance when he registered his vehicle but subsequently allowed his insurance to terminate during the license year, would immediately be required to pay the \$20 fee to the Department of Transport, subject to a penalty, including suspension of his driving privileges, for failure to do so. This provision, coupled with the higher uninsured owner fee, would, the Committee believes, induce a large number of owners to insure themselves and maintain that insurance throughout the license year;
- (d) that proof of insurance be established through the issuance to the owner of a motor vehicle of a form prescribed by the Minister of Transport (similar to the "pink card" form used by other provinces). An owner should be required to produce this form when requested to do so by the police. There should be a penalty for

the production of a form which is not valid. If these provisions are adopted, it will be possible to work out a "pink card reciprocity agreement" with the other provinces of Canada, such as Manitoba, that require a person who is involved in an accident in their jurisdictions, whether or not he is at fault, to produce proof of insurance on pain of having his car impounded on the spot. The Committee believes that this form of proof of insurance would be accepted by the "pink card jurisdictions" and that a matter which has caused difficulties for Ontario motorists travelling in other parts of Canada could thereby be cleared up satisfactorily. Proof that, in the absence of insurance, the \$20 fee has been paid to the Department of Transport, should also be established through the issuance by the Department of an appropriate form. As the Committee has pointed out, if failure to produce either proof of insurance or proof of payment of the \$20 fee at any time during the license year is made punishable by a strong penalty, the number of insured vehicles on our highways and streets will undoubtedly increase significantly.

The actual effect of these provisions, if they are implemented, should be known fairly conclusively by April of 1962 following the period for the 1962 registration of motor vehicles. And if the committee is reconstituted by the Legislature, it will have this knowledge before it to help it make a final decision on the over-all insurance plan which should be recommended for the Province of Ontario.

2. The replacement of the Unsatisfied Judgment Fund by a new, easily accessible and expeditious settlement system for the indemnification of victims of accidents involving uninsured, hit-and-run and stolen vehicles.

The Committee wishes to point out that no matter what plan of insurance is ultimately adopted in the Province of Ontario, it will still be necessary to supplement it with a provision that covers situations where there is no insurance. No insurance plan anywhere has ever produced 100 percent coverage of all motor vehicles licensed within its jurisdiction. This has been the experience of New York State, with its compulsory insurance plan, and of those provinces where safety responsibility laws are in operation.

The Committee is unimpressed with representations that have been made to the effect that it should recommend the complete transfer of the Fund operation to a body that would be set up and managed by the insurance industry. Such a scheme would not tie in satisfactorily with the methods recommended in the foregoing section to maximize the number of insured vehicles on Ontario's roads. It would not place the burden of the cost of operating the Fund on those who should really bear it, namely uninsured owners. In any case, the Committee believes that the public interest would be served best if the Fund were retained in the hands of the Government.

Accordingly, it is suggested:

- (a) that the new provision be termed the Motor Vehicle Accident Claim Fund since, as will be indicated in the following paragraphs, the Committee suggests the elimination of the judgment aspect of the Fund;
- (b) that the operation of the Fund be brought entirely within the ambit of a body that would be responsible to the Minister of Transport and that the Fund be separate and self-sustaining;
- (c) that this body be given power to make settlements, with the consent of the claimant, of claims filed with it, up to the limits of the Fund, without the necessity of a judgment being secured by the claimant. It is suggested that the facilities of private adjusting firms and of the insurance industry be employed to investigate claims;
- (d) that the driving privileges of any person on whose behalf a claim is paid be suspended until that person makes arrangements to repay the amount of the claim to the Fund, as is the case at present with the Unsatisfied Judgment Fund;
- (e) that the person on whose behalf a claim is paid by the Fund have a right of action in the courts against both the degree of negligence found and the quantum of damages assessed by the Fund. In the case where a defendant does dispute the finding of the Fund, the decision of the courts as to negligence and quantum of damages should supersede the finding of the Fund, but this should not change the finding of the Fund as it affects the claimant. It should only influence the recovery which the Fund may make from the defendant;
- (f) that the maximum limits of payment from the Fund be increased to \$20,000 for injury or death to one person, \$40,000 for injury or death to two or more persons and \$5,000 for property damage. While the present Unsatisfied Judgment Fund limits of \$10,000, \$20,000 and \$2,000 now cover the quantum of damages in virtually every judgment paid by the Fund, the Committee believes that the higher limits recommended will afford a more adequate and complete measure of protection for the innocent victims of accidents involving uninsured, hit-and-run and stolen vehicles;
- (g) that the Fund, in the interests of efficiency and economy, entertain no property damage claim of less than \$50. It is pointed out that those who are involved with uninsured vehicles in property damage losses of less than this amount would have speedy recourse through the Division Court;
(Mr. Davison dissents. He believes the Fund should entertain all property damage claims.)
- (h) that the Fund pay property damage claims despite the existence of collision coverage on the claimant's vehicle;

- (i) that claims arising in connection with hit-and-run accidents be left on the same basis as at present, with the claimant obtaining the consent of the court to a proceeding against the Registrar of Motor Vehicles and with no right of action in connection with hit-and-run property damage claims.
- (j) that appropriate educational measures be implemented to acquaint the public with the purpose, procedures and benefits of the Fund.

3. An increase in the statutory minimum limits of automobile third party liability insurance to \$20,000 for death or injury to one person and \$40,000 for death or injury to two or more persons.

The existing limits are \$10,000 and \$20,000 in these categories and, of course, if the limits of the Fund are increased there must be a corresponding increase in the limits of the insurance available to the public. The Committee believes that the property damage minimum limit can safely be retained at its present level of \$5,000. This appears to be adequate in most cases. The All Canada Insurance Federation has stated that basic limits of 20/40/5 will cost approximately seven per cent more than limits of 10/20/5. Having regard to the cost factor, the Committee thinks it is better to devote the additional cost to bodily injury benefits than to extended property damage coverage. In any case, the Committee does not feel that the added cost of higher limits will bear unduly upon the people of Ontario since most owners (All Canada Insurance Federation estimates 80 per cent) already carry limits in excess of 20/40/5. The net result of this change would be to bring minimum insurance limits well into line with present-day damage awards.

4. The granting of power to the Government to control insurance premium rates through the Superintendent of Insurance.

The Committee feels that the Legislature owes a duty to the public to provide a form of machinery which will guarantee that insurance rates are maintained at a reasonable level. Thus, the Committee recommends that the Superintendent of Insurance be given full power to investigate and to order adjustments where he believes rates to be excessive, inadequate, unfairly discriminatory or otherwise unreasonable, subject to an appeal against his order to the Court of Appeal. It should be noted that All Canada Insurance Federation has already recommended to the Attorney-General of Ontario and the Superintendent of Insurance that the latter be given rate control powers.

5. Modifications should be made in the Ontario Automobile Assigned Risk Plan and the Government should be given power to supervise and regulate the plan through the Superintendent of Insurance.

At a meeting earlier this year, the All Canada Insurance Federation informed the Committee that the rules, regulations and surcharges of the Plan were to be revised immediately and that henceforth the Plan was prepared to follow the policy of granting insurance to all persons licensed to drive in Ontario, if the Government would establish a Board of Review

to which the Plan could appeal in any case where it felt a person should not be insured. Such an appeal board does not, of course, exist and subsequently the Federation indicated that the Plan was willing to begin following this policy even without an appeal board. The Committee welcomes the action of All Canada Insurance Federation but feels that specific provision should be made in the laws of Ontario for the Assigned Risk Plan and therefore recommends:

- (a) that every licensed automobile insurer in Ontario be obliged to participate in the Plan;
- (b) that all rules, regulations, rate schedules and surcharges of the Plan be subject to the approval of the Superintendent of Insurance and that where any dispute arises in connection with these matters an appeal may be taken from the decision of the Superintendent to the Court of Appeal;
- (c) that the Plan be required to insure any person whom the Department of Transport is prepared to license as a driver;
- (d) that the Plan have the right to appeal to the Registrar of Motor Vehicles against the necessity of insuring any person and, consequently, against the licensing of such a person;
- (e) that a special appeal board be established to hear appeals from the Plan or from individuals against the decisions of the Registrar.

The Committee also urges the participants in the Assigned Risk Plan to give serious consideration to permitting the instalment payment of premiums by assigned risk insureds. The Committee does not feel that legislation or regulations should be enacted to enforce something which is really a matter of internal housekeeping, but the members think it wise to point out that the requirement of most companies that assigned risk insureds should pay the full premium in advance does work hardship on some individuals.

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The foregoing recommendations, with the exception of the first one, dealing with the uninsured motorist fee, actually can and should be implemented whether some other insurance plan is ultimately adopted or Ontario's present arrangements are retained. As suggested earlier, the Committee desires more time to weigh the advantages of the various methods of compelling or inducing financial responsibility on the part of the owners of motor vehicles. It also wishes to give further consideration to the question of a right of recovery for gratuitous passengers; the desirability of incorporating into the new Fund a feature involving the payment of compensation regardless of fault for death, injury, loss of wages, etc.; the law of negligence and certain provisions of the Insurance Act.

Therefore, the Committee requests that it be given the authority to sit during the recess between the Fall and Winter portions of the current session of the Legislature and that its mandate be renewed so that it may continue its investigations after the prorogation of the current session.

All of which is respectfully submitted.

James N. Allan

Jules Morin

Keith Brown

Donald H. Morrow

A. H. Cowling

J. R. Simonett

Norman Davison

Vernon M. Singer

J. Fred Edwards

Ross Whicher

George Comme

Harry Worton



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